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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1660 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT DISTRICT PANCHAYAT

Versus

VAJASOOR ALA RATHOD

Appearance:

1. Special Civil Application No. 1660 of 1996

MR HJ NANAVATI for Petitioner No. 1

..... for Petitioner No. 2

MR PH PATHAK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 11/01/2005

ORAL JUDGEMENT

Heard learned advocate Mr. H.J. Nanavati for

the petitioners and Mr. P.H. Pathak for the respondent. In this petition, the petitioner panchayat has challenged the award made by the labour court, Rajkot in Reference No. 412 of 1984 dated September 8, 1995 wherein the labour Court has granted reinstatement with continuity of service with 20 per cent back wages for the intervening period.While admitting the petition by issuing rule thereon, this court has granted stay in terms of para 6(a) as well as 6(b) till final hearing of the petition and has, thus, stayed operation of the award in question by order dated March 25, 1996. Said order is reproduced as under:

"Heard Mr. Vaishnav for the petitioner. None present for the respondent, though the matter was adjourned on two occasions for that purpose. The matter was called out today also twice. The respondent was employee under the petitioner panchayat from 30th October, 1980 to 31st November, 1982 i.e. for a period of about two years, on a purely temporary basis, as per the appointment order, for flood relief work. His discontinuation has led to the impugned award. Mr. Vaishnav submits that, engagement in Flood Relief work is not an industry as held by the Full Bench of this Court in 1994 (2) GLR 1002 and, hence, the impugned award is a nullity. That apart, it is accepted by the learned Labour Judge that the respondent has been working in an appropriate alternative employment in Jamnagar Jilla Parishad and Mr. Vaishnav has drawn my attention to a letter from that Jilla Parishad showing the wages received by the respondent continuously from 1984 onwards. In this view of the matter, the matter requires consideration. Hence, Rule. There will be a stay in terms of prayer 6(a) as well as 6(b) till the hearing and disposal of the petition."

Learned advocate Mr. Nanavati submits that the respondent was appointed in relief work on 1st November, 1980 and accordingly appointment order was issued by the petitioner panchayat. According to him, the respondent was appointed as a Chokidar (Watchman) on monthly salary. His service was terminated on 3.8.1982. By placing reliance on the decision of the Full Bench of this Court in H.K. Makwana versus State of Gujarat and others [35(2) GLR 1002], it was submitted by Mr. Nanavati that the relief work is not coming within the definition of industry as per section 2(j) of the Industrial Disputes Act, 1947, therefore, Industrial Disputes Act, 1947 is

not applicable to the facts of this case. He also submitted that the respondent is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947, therefore, there is no violation of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. He also submitted that in the year 1984, the workman has been appointed in the Jamnagar District Panchayat as a Mistry with effect and in view of these circumstances also, grant of the relief of reinstatement in favour of the workman is not justified. He also submitted that the labour court has not given any reason for granting 20 per cent back wages for the intervening period. According to him, since the appointment was made for a particular project, means relief work, termination cannot be questioned before the Court by raising contention that the termination is violative of section 25-F of the Industrial Disputes Act, 1947. In short, it is his submission that the Labour Court has committed gross error in making the award of reinstatement with 20 per cent of the back wages for the intervening period. Except these submissions, no other submissions were made by Mr. Nanavati. Except the decision of the Full Bench in H.K. Makwana (supra), no other decisions were cited by Mr. Nanavati before this Court.

On the other hand, learned advocate Mr. Pathak appearing for the respondent has submitted that the date of appointment and the date of termination of service of the respondent are not in dispute between the parties. According to him, the petitioner has also not disputed the completion of 240 days by the workman within the meaning of section 25B of the Industrial Disputes Act, 1947 and, therefore, the labour court was right in granting benefit of section 25-F of the Industrial Disputes Act, 1947 which has been violated at the time of termination of service of the workman. Therefore, order of termination is bad, illegal and void ab initio and labour court was right in setting aside such an order and granting the relief of reinstatement with 20 per cent back wages in favour of the workman. It was also submitted by him that before the labour court, no such contention was raised by the petitioner that the relief work is not covered by the definition of 'industry'. No evidence to that effect was led and proved by the petitioner before the labour court and, therefore, now the petitioner cannot raise such contention for the first time before this Court in a petition under Article 227 of the Constitution of India. According to him, before relying upon the decision in HK Makwana (supra), petitioner is required to prove that issue by producing cogent and convincing evidence to that effect and then

the decision can be considered. According to him, there is no evidence on record to show that the workman was appointed on relief work. According to him, the labour court has rightly decided the matter and granted the relief while appreciating the facts on record.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. I have also perused the appointment order issued by the Deputy Executive Engineer, R & B Panchayat Sub Division Relief Work No.2, Morbi dated 30th November, 1980 wherein appointment came into effect from 1st November, 1980 which has been considered as Hangami and he has to work for 24 hours in the pay scale of Rs.196-3-232. Appointment order of the workman was placed before this Court by the learned advocate Mr. Pathak. On perusal of the said appointment order, it appears that the condition that the workman is appointed in the relief work has not been incorporated. Such condition has not been incorporated even in the sanction order/letter and there is no such indication that the workman has been appointed as a Chokidar (Watchman) in relief work. Condition No. 5 suggests that whatever expenses and salary of the workman has to be adjusted against the relief work and that does not mean that he has been appointed against the relief work. This appointment order is very much clear and the conditions of the order of appointment are also clear and looking to this appointment order and considering the conditions thereof, according to my opinion, it cannot be said that the respondent workman was appointed for the scarcity work as contended by Mr. Nanavati but it can be said that the workman has been appointed to watch the store material of the Sub Division for 24 hours. It is also clear that if an employer informs the workman while issuing appointment order that his appointment is in a particular project or for a particular work, then, on completion of such project or particular work, employer has right to terminate service of such a workman and otherwise, employer has no right or authority to terminate service of any workman. If such condition is not incorporated in the order of appointment, then, it is not open for the employer to take such a plea that the appointment of the workman was for a particular project or work. Looking to the facts of the present case, it is clear that the workman was not appointed against the relief work and, therefore, there is no question of applying the ratio of the decision of the Full Bench of this Court in HK Makwana (supra) in view of the peculiar facts of the present case as the petitioner was not appointed for the relief work. In SM

Nilajkar and others v. Telecom District, Manager, Karnataka [AIR 2003 SC 3553], the apex court considered the question of termination of project employees. In para 13 of the said judgment, it was observed by the apex court as under:

"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub clause (bb) subject to the following conditions being satisfied

(i) that the workman was employed in a project or scheme of temporary department;
(ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment. "

Looking to the facts of the present case in light of the aforesaid observations made by the apex court, if the case of the present workman is to be taken out from sec. 2(oo) and to apply sec. 2(bb), then, certain conditions are required to be satisfied by the employer, one of which is that the workman has to be apprised or made aware of the abovesaid terms by the employer at the commencement of employment and in the event of non compliance of such condition, the employer is losing right to take such plea that he was appointed only for a particular project or particular work and, therefore, not entitled for the protection of section 25F of the ID Act, 1947. If the appointment order of the workman in this case is considered in light of the principles laid down by the apex court in the aforesaid decision, then, it is clear that at the time of commencement of employment i.e. at the time of issuing order of appointment, the workman was not apprised or made aware of the abovesaid terms by the employer at the commencement of employment since there is no such condition incorporated in the order of appointment dated 30th October, 1980 that he has been appointed for relief work. On the contrary, looking to the order of appointment of the workman, it is clear that he was required to work for 24 hours as a Hangami in the

scale of Rs.196-232, therefore, he was not daily wager or temporary but straightaway appointed in the particular pay scale without making mention of any particular project or work namely relief work. Therefore, considering the terms and condition of the appointment order of the workman in this case and also considering the principles laid down by the apex court in case of SM Nilajkar and others v. Telecom District, Manager, Karnataka [AIR 2003 SC 3553], since the workman was not appointed for the particular work namely relief work and since it has not been specified in the order of appointment, the workman becomes entitled for the protection of section 25F of the Industrial Disputes Act, 1947. It is an admitted position that the workman had completed 240 days continuous service in a calendar year at the time of termination of his service. It is also not the case of the learned advocate Mr. Nanavati that the petitioner has complied with mandate of sec. 25F of the ID Act, 1947 but it is his plea that the workman is not entitled for such protection under the pretext that his appointment was for a particular work. In view of the above and in view of the non compliance of section 25F, the order of termination of service of the respondent was void ab initio. In Mohan Lal V. The Management of M/s Bharat Electronics Ltd. (AIR 1981 SC 1253) the Supreme Court has specifically held that where pre-requisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void.

Therefore, in view of the facts and circumstances of the case and the decision of the apex court as aforesaid, contention of the learned advocate Mr.Nanavati that the workman as appointed for the relief work cannot be accepted and the same is rejected. Looking to the facts of the present case, appointment order of the workman in particular and also considering the decision of the apex court in SM Nilajkar (supra), the decision in HK Makwana (supra) would not apply to this case since no evidence was led by the petitioner before the labour court to prove that the respondent was appointed for particular relief work. There is no iota of evidence led by the petitioner to that effect before the labour court. Therefore, considering the fact that the labour court has relied upon the oral evidence of the workman Exh. 40 that he was engaged and appointed as a Mistry in the District Panchayat, Jamnagar in the year 1984 and considering the entire facts and circumstances of the case and non compliance of the mandatory provisions of section 25F of the ID Act, the labour court has granted reinstatement with continuity of service with 20 per cent

back wages for the intervening period. According to my opinion, the labour court was right in granting such relief in favour of the workman and in doing so, no error has been committed by the Labour Court. Learned advocate Mr. Nanavati has not been able to point out any jurisdictional error and/or irregularity in the impugned award. He has also not been able to point out any infirmity in the impugned award warranting interference of this Court in exercise of the powers under Article 227 of the Constitution of India. Therefore, there is no substance in the petition and the same is required to be dismissed.

In the result, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas